

**REGULAR STATE BANKING BOARD MEETING
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

September 28, 2004

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:00 a.m., Tuesday, September 28, 2004.

MEMBERS PRESENT: Timothy J. Karsky, Chairman
Ron Braseth, Member
Bill Daniel, Member
Lorren Henke, Member
Launa Moldenhauer, Member
Anita Quale, Member

MEMBER ABSENT: Roger Monson, Member

ALSO PRESENT: Suzette Richardson, Acting Secretary
Scott Miller, Assistant Attorney General

APPROVAL OF ACTING SECRETARY

It was moved by Member Moldenhauer, seconded by Member Daniel, and unanimously carried by a vote of 6 to 0, with Member Monson absent, to approve Suzette Richardson as Acting Secretary for this meeting.

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on July 8, 2004. **It was moved by Member Braseth,**

seconded by Member Henke, and carried by a vote of 6 to 0, with Member Monson absent, to approve the minutes as published.

STATE BANK & TRUST, FARGO – APPLICATION TO ESTABLISH A FACILITY AT 15 NORTH BROADWAY, PELICAN RAPIDS, MN

Rod Jordahl, Senior Vice President, and Blake Nelson, Vice President, of State Bank & Trust, Fargo, joined the meeting via conference call.

Chairman Karsky asked SVP Jordahl to review the application with the Board.

SVP Jordahl stated the bank has had a Loan Production Office at 15 North Broadway, Pelican Rapids, MN, for the past 2½ years, which has built up a loan base close to \$10 million. SVP Jordahl stated the bank has submitted an application to convert the LPO to a full service facility. SVP Jordahl stated the manager and loan officers previously at the location would remain at the facility. SVP Jordahl indicated this is not a significant change for the bank other than the deposit relationships which have been developed. SVP Jordahl indicated State Bank & Trust does have a number of customers already in the Pelican Rapids area, which would constitute approximately \$3 million in current deposit relationships. SVP Jordahl stated the bank would be extending the region it would be offering services to, along with benefiting existing customers.

Chairman Karsky asked SVP Jordahl how much work would have to be done on the building if the facility application is approved. SVP Jordahl explained the security issues would have to be addressed, along with adding teller lines.

Chairman Karsky referred to Chief Examiner – Banks Jungman's Memorandum dated September 21, 2004. The statutory criteria as outlined in North Dakota Century Code Section 6-03-13.3 require the State Banking Board to take into consideration the following facts when determining whether to approve an application:

1. The convenience, needs, and welfare of the people in the community and area served.

Chairman Karsky indicated the bank currently has customers in a 15-mile radius of the trade area, with \$5 million in deposits and \$11 million in loans.

2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.

Chairman Karsky stated the bank's assets are now over \$1 billion so he does not believe the establishment of this facility will have a big impact on the bank.

3. Whether other banks will be seriously injured by approval of the application.

Chairman Karsky indicated no comments have been received regarding this application, and as pointed out in Chief Examiner – Banks Jungman's Memorandum, although there are several banks currently located within the targeted trade area, most of these banks have been providing service for over 70 years; therefore, the applicant does not believe there would be serious injury to any other bank.

Chairman Karsky indicated the application was published pursuant to North Dakota Administrative Code Section 13-02-05-05.1 in the *The Forum, Fargo*, on July 26, 2004, and the *Pelican Rapids Press* on July 28, 2004. The comment period expired on August 11, 2004, and no comments were received, nor were there any requests for an opportunity to be heard before the Board. Chairman Karsky indicated a copy of the application was sent to the Minnesota Department of Commerce, and they responded on August 11, 2004, that they did not have any objection to the application.

Chairman Karsky stated the Department has determined that the application complies with all the requirements of the North Dakota Administrative Code, and would recommend approval of the application.

It was moved by Member Braseth and seconded by Member Quale to approve the application by State Bank & Trust, Fargo, to establish a facility at 15 North Broadway, Pelican Rapids, MN.

Chairman Karsky asked if SVP Jordahl or VP Nelson had any other comments, and if the application is approved, when they anticipate opening the

facility. SVP Jordahl stated the bank is anticipating opening the facility on December 1, 2004.

The above motion was unanimously carried by a vote of 6 to 0, with Member Monson absent. At this time the Order was signed by the Board.

SVP Jordahl and VP Nelson left the meeting via conference call at this time.

UNDERWOOD HOLDING COMPANY – CHANGE OF CONTROL APPLICATION

Chairman Karsky indicated the Board had previously voted by mail to approve this change of control, and at this time the Board should reaffirm that mail vote.

It was moved by Member Henke, seconded by Member Moldenhauer, and unanimously carried by a vote of 6 to 0, with Member Monson absent, to reaffirm the Board's approval of the change of control application by Underwood Holding Company, Underwood, to transfer 800 shares.

HUNTER HOLDING COMPANY – CHANGE OF CONTROL APPLICATION

Darvin Hauff, President of Security State Bank of Hunter, Hunter, joined the meeting via conference call.

President Hauff indicated that partners in the holding company have decided to retire due to age; therefore, the holding company is redeeming 13,000 voting shares and 28,000 of non-voting shares from each of Robert C. Dawson; Robert and Edith Dawson, LLLP; James R. Dawson; and James R. Dawson, LLLP. President Hauff indicated the remaining voting shares of the holding company would be held by himself, his son Jason Hauff, and Roy Daschendorf.

Chairman Karsky referred to Chief Examiner – Banks Jungman's Memorandum dated September 21, 2004, which indicated the Department received the change of control application on August 6, 2004. Pursuant to North Dakota Administrative Code Section 13-02-17-01, notice of the proposed change of

control application was published in *The Forum*, Fargo, on August 30, 2004, with the comment period expiring September 23, 2004. As of September 21, 2004, the Department had not received any comments or any requests for copies of the application.

Chairman Karsky indicated that North Dakota Century Code Section 6-08-08.1(4) provides that the Board may disapprove any change of control application if the Board determines that (a) the character, reputation, general fitness, financial standing and responsibility of the persons proposed as new stockholders, directors, or officers is such that the interest of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management, or (b) the qualifications of management do not include adequate experience with financial institutions or other approved related experience.

Chairman Karsky indicated the proposed change of control involves the redemption of 26,000 voting shares and 56,000 non-voting shares of the outstanding shares of Hunter Holding Company from Robert C. Dawson; Robert and Edith Dawson, LLLP; James R. Dawson; and James R. Dawson, LLLP. In connection with this redemption there is a change of control wherein the above individuals will be redeeming a total of 82,000 shares of voting and non-voting stock and will result in a change in control from the Dawsons to Darvin Hauff, Jason Hauff, and Roy Daschendorf. The redemption will reduce the voting shares from 50,000 to 24,000, and the non-voting shares from 200,000 to 168,000. As a result, Robert C. Dawson, who is Chairman of the Board of the three state-chartered banks as well as the holding company, will step down from his capacity, and Darvin D. Hauff will be named Chairman of the Board of three state-chartered banks and the holding company. In connection with this transaction, Darvin Hauff's ownership in the holding company will go from 29.6% to 66.7% of the voting shares, and Jason Hauff's interest will go from 12% to 25% of the voting shares. Roy Daschendorf's interest will go from 4% to 8.3%.

Chairman Karsky indicated to fund this transaction the holding company proposes to issue junior subordinated debentures of approximately \$2,965,000; obtain a bank stock loan for \$1.5 million from a correspondent bank; \$125,000 dividend from the First State Bank of Gackle; and \$20,000 of cash on hand at the holding company. The funds will be used to redeem the stock of the Dawsons of \$2,214,000; retire existing bank stock debt of \$2,068,000 plus interest of \$28,000;

and capital injections into Security State Bank of Hunter for \$240,000 and \$110,000 into the First State Bank of Hope.

Chairman Karsky stated these are trust preferred securities, and President Hauff agreed.

Chairman Karsky indicated the Department recommends approval of this change of control application.

It was moved by Member Braseth and seconded by Member Moldenhauer to approve the change of control application of Hunter Holding Company, Hunter, to redeem 26,000 voting shares and 56,000 non-voting shares, as well as the request by the First State Bank of Gackle, Gackle, to pay a dividend in the amount of \$125,000. The motion was unanimously carried by a vote of 6 to 0, with Member Monson absent.

President Hauff left the meeting via conference call at this time.

THE CITIZENS STATE BANK OF FINLEY, FINLEY – REQUEST FOR WAIVER OF APPARENT VIOLATION

Chairman Karsky referred to the letter dated July 29, 2004, received from Roger Monson, President of The Citizens State Bank of Finley, requesting a waiver of an apparent violation of an investment in life insurance which was cited in the Department's November 3, 2002, report of examination.

Chairman Karsky indicated the Board previously amended the rules regarding key man life insurance; however, The Citizens State Bank of Finley never requested a waiver at that time.

It was moved by Member Henke, seconded by Member Daniel, and unanimously carried by a vote of 6 to 0, with Member Monson absent, to approve the request of The Citizens State Bank of Finley, Finley, for a waiver of an apparent violation of an investment in life insurance.

DACOTAH BANK, ROLLA – EXTENSION REQUEST - WITHDRAWN

Chairman Karsky informed the Board that the facility of Dacotah Bank, Rolla, to be located at 1121 South Broadway, Minot, opened within the specified timeframe listed in the Order; therefore, an extension is not needed.

DEPOSIT PRODUCTION OFFICES

Chairman Karsky indicated the Board has held the hearing regarding the proposed new North Dakota Administrative Code Chapter 13-03-22, Deposit Production Offices. Chairman Karsky indicated the Department has received several negative comments, namely from Don Forsberg, Executive Vice President of the Independent Community Banks of North Dakota.

Chairman Karsky stated he would like to table this agenda item until the next State Banking Board meeting to be held November 18, 2004, and at that time the Board can decide whether to withdraw the entire rule process.

ITEMS TO BE NOTED

Department of Financial Institutions

Articles of Amendment

Farmers State Bank of Crosby, Crosby, to change number of directors from 3 to 4.

Comptroller of the Currency

Approved 7-16-04 and effective 8-23-04, Bremer Bank, National Association, Moorhead, MN, and Bremer Bank, National Association, Minot, to merge into Bremer Bank, National Association, Fargo.

Received 7-16-04 and approved 8-31-04, Community First National Bank, Fargo, to open branch at 141 Roadrunner Parkway, Las Cruces, NM.

Effective 7-19-04, U.S. Bank National Association, Cincinnati, OH, to close its First Bank Fargo, West Office, located at 2424 13th Avenue South, Fargo.

Received 8-3-04, U.S. Bank National Association to relocate its First Bank Fargo, West Office, from 2424 13th Avenue S., Fargo, to 3225 25th Street South, Fargo.

The Board went into closed session at 9:25 a.m., and returned to open session at 11:00.

HEARING – DAKOTA COMMUNITY BANK, HEBRON – APPLICATION TO ESTABLISH A FACILITY AT 919 SOUTH SEVENTH STREET, BISMARCK

The hearing began at 11:00 a.m. and concluded at 2:50 p.m.

DAKOTA COMMUNITY BANK, HEBRON – APPLICATION TO ESTABLISH A FACILITY AT 919 SOUTH SEVENTH STREET, BISMARCK

Chairman Karsky stated since the hearing has concluded, the application by Dakota Community Bank, Hebron, to establish a facility at 919 South Seventh Street, Bismarck, is now before the Board for their consideration.

Chairman Karsky indicated the statutory criteria as outlined in North Dakota Century Code Section 6-03-13.3 require the State Banking Board to take into consideration the following facts when determining whether to approve an application:

1. The convenience, needs, and welfare of the people in the community and area served.
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by approval of the application.

Chairman Karsky indicated he believes there are two issues in this application to consider: the temporary facility and permanent facility. Chairman Karsky stated he questions whether the applicant has established the need for the temporary facility, and whether the temporary facility will be a processing center, take deposits, or do loans. Chairman Karsky questioned whether there is a need for the applicant to establish a temporary facility.

Member Daniel asked if the Board could vote on the temporary facility separately from the permanent facility.

Member Henke asked if the Board is to consider the temporary facility and permanent facility as one application.

Chairman Karsky indicated he felt the Board could specify in its Order the approval it is granting regarding the temporary facility and/or permanent facility, along with any time restraints.

Member Moldenhauer asked what issue is before the Board, whether it is consideration for both the temporary and permanent facilities.

Member Henke stated he assumes the Board must act on what has been presented, which would be the joint application requesting both a temporary facility and permanent facility.

Chairman Karsky referred to a letter dated June 4, 2004, from Stan Sayler, included in the facility application, which states Dakota Community Bank is requesting approval for a permanent facility which would be located on the first floor of the Kirkwood Tower, and a temporary facility which would be located on the sixth floor of the Kirkwood Tower. The temporary facility would open October 1, 2004, and the permanent facility shortly after April 1, 2005.

Chairman Karsky stated he believes when considering the permanent facility, the application does satisfy the convenience issue, and also that the financial strength of the bank and management are sufficient; however, he feels there are problems in those same areas when considering the temporary facility.

Chairman Karsky referred to the third criteria of whether other banks will be seriously injured by approval of the application, and indicated that is why the

protestants are present today to state they will be seriously injured by approval of this application.

Assistant Attorney General Miller stated it is the Board's statute to administer and that how each of the members decides what "serious injury" constitutes is entitled to difference, since there is nothing specifically defining "serious injury" in North Dakota.

Member Daniel asked when determining "serious injury" if the Board should consider only the effects on customers, stockholders, or owners of the bank. Assistant Attorney General Miller indicated the Board would consider serious injury to any other banks in the area, not to customers.

Member Daniel asked if the only thing the Board should be focusing on is serious injury to other banks, and Assistant Attorney General Miller responded that the Board needs to consider all three criteria and decide whether all three are met by the applicant.

Member Daniel asked if the Board should get involved in the issues between the landlord and tenant that were discussed during the hearing. Assistant Attorney General Miller responded he feels those issues are completely irrelevant. Assistant Attorney General Miller stated this Board has no input or statutory authority regarding a landlord's decision to re-rent a facility to another entity; any decision in this regard would have to be made in court.

There was considerable discussion on whether the Board could dictate a "blackout period" when making a motion regarding this application, and Assistant Attorney General Miller stated the Board could include any restrictions in its motion.

Assistant Attorney General Miller stated the Board needs to reconcile all the evidence that has been presented and base its decision on that evidence.

Member Daniel asked if the Board needs to consider or determine whether or not Dakota Community Bank's actions were predatory. Assistant Attorney General Miller indicated that is a legal issue and does not have anything to do with the application before the Board.

Chairman Karsky and Assistant Attorney General Miller informed the Board they have the option of taking action today, or table any action and request further information. Assistant Attorney General Miller stated the Board would not hear more testimony, as the hearing has concluded.

It was the consensus of the Board to act on the application at this time.

At this time, Chairman Karsky stepped down as Chairman and asked Member Braseth to preside as Chairman. Member Braseth accepted the appointment as Chairman.

Member Karsky moved that the Board deny the request by Dakota Community Bank, Hebron, to establish a temporary facility at 919 South Seventh Street, Bismarck, but approve the permanent facility to be located at 919 South Seventh Street, Bismarck, and that the permanent facility cannot be established until December 1, 2005. The motion was seconded by Member Quale.

Assistant Attorney General Miller asked for clarification on whether the December 1, 2005, date in the motion refers to when the bank would be allowed to begin renovation or the date the facility can open. Member Karsky stated it is his intent December 1, 2005, is the date the facility can be opened.

After further discussion, the above motion was carried by a vote of 6 to 0, with Member Monson absent.

Chairman Karsky indicated the applicant needs to draft the Findings of Fact, Conclusions of Law, and Order to be filed with the State Banking Board to be considered at its meeting to be held November 18, 2004. Chairman Karsky stated the Findings should be sent to Assistant Attorney General Miller for his review.

The meeting adjourned at 3:25 p.m.

Timothy J. Karsky, Chairman

Suzette Richardson, Acting Secretary